

## Condominium

**Tue 4/28/2015 8:55 PM**

Hi,

I am confused where Condominium Conveyance is a Subdivision. Land isn't being divided. Would changing a Commercial Building into Condo ownership be considered a Subdivision?

Any help would be appreciated.

Tom Case

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672:14 Subdivision. -

I. "Subdivision" means the division of the lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

**Wed 4/29/2015 8:02 AM**

In Dover we consider Condominium as a form of ownership and not a form of subdivision, for the reason you mention, Tom.

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**Wed 4/29/2015 8:42 AM**

Tom

It is my understanding the reason New Hampshire's statutory definition of the word "subdivision" includes the partitioning of land and/or buildings into individual condominium units relates to the fact that any single condominium unit is "real property" that may be conveyed to a single owner or party separately from other units within the same condominium. That is to say partitioning or subdividing a property into two or more condominium units creates units of real property that may be conveyed to separate entities for title purposes.

Steven Keach

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**Wed 4/29/2015 10:37 AM**

Steve is correct, as per usual.

Note that because the authority to regulate subdivisions is enabling legislation, the state's statutory definition of "subdivision" is a maximum scope of authority. A municipality may choose to regulate less than that, and so may choose not to regulate condominiums as a subdivision. I don't recommend this, but just observe that it can be done. If a municipality adopts a local definition of subdivision that encompasses less than what is contemplated by the statute, then it cannot stretch its definition to include the statutory terms (see *Dearborn v. Milford*, 120 NH 82 (1980)).

Remember also that not all condominiums are created equal - they are merely a form of ownership, NOT a type of construction. A development may consist of free-standing single family homes and include private roads and other infrastructure, and yet the units may be conveyed as condominiums. If you're the planning board, wouldn't you want to regulate that as a subdivision?

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**Wed 4/29/2015 2:02 PM**

The one thing to keep in mind above all else is do not permit any form of condominium ownership to transfer ownership of common land or limited common land to a homeowners or unit owners association. If you do, I guarantee the common land or limited common land will end up being tax deeded to the town, which is the last thing the town or city wants. The best way to ensure that does not happen is to actively regulate condominium creation as a subdivision and mandate as part of the approval by the planning board that all unit owners shall own an undivided interest in the whole of the limited common area or common area.

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**Fri 5/1/2015 3:27 PM**

The condominium form of ownership is a creature of statute that originated in the late 1950's to address problems with federal lending regulations. Prior to the condo concept, many apartment buildings were

converted to a cooperative form of ownership where the coop owned the real estate and the member owned a share of the coop with the right to occupy a certain unit. Banks would not lend because their security was a coop membership, not real estate. This concept still exists in metropolitan areas but does not fit the mold for fee ownership required under the federal lending regulations. There were also "tenant in common agreements" where each member owned an undivided share of the whole with the agreed upon right to occupy a unit, (similar but different to a coop). The common law recognized the right to own individual rooms in a house, but the common law rules regarding ownership of the common elements was rather problematic. (Who fixes the roof when it leaks?). The concept of vertical ownership divisions of portions of buildings has existed from ancient times in Europe.

The U.S. territory of Puerto Rico came up with the original condominium ownership statutes to address their housing and lending problems in the '50's. The idea at that time was that the fee ownership is of the air space between the walls, (dubbed "castles in the sky"). This was based on the idea that real property is made up of a bundle of rights including the land under and the air above, (to a certain point). Each stick in the bundle can be severed and sold separately. (Think mineral rights). Therefore, the airspace within the wall may be severed and becomes the fee simple "Condominium Unit." The building and land became the "Common Area" owned in common by the unit owners. The feds bought into the idea for lending and the concept exploded throughout the country in the 60'.

The Uniform Law Commission drafted several versions of the Uniform Condominium Act in the '70's. New Hampshire adopted a modified version of an early Uniform Act in 1977 as RSA 356-B, (Condo Act). The Condo Act sets out in specific detail what is required to "submit" property to the Condominium Act, including site plans, floor plans, definition of common areas, limited common areas, Declaration provisions and more. The New Hampshire statute needs some work given the evolution of the condominium concept, but that is a discussion for another day.

The condo concept has evolved over time to include other "sticks" in the bundle of rights including parking spaces, storage units, docks, boat storage racks, camping sites and the list goes on.

Regarding local review and approval of condominiums, the prior comments regarding the local definition of subdivisions is correct. The municipality may review condominiums, but their review is limited to such issues as zoning compliance, (density, setbacks, parking, etc.). What the municipalities may not do is require that the condominium documents contain something that runs counter to the Condominium Act. There is a great deal of interdependency between the plans, floor plans and declaration that needs to be fully understood when considering conditions of approval. Therefore, it is imperative the planning board be knowledgeable about the contents of the Condo Act as they move through the review process. This is one of those situations where having legal counsel review is important. Note that RSA 356-B:5 states, in essence, that a municipality may not prohibit a condominium based upon the form of ownership.

Please note that under RSA 356-B:17, I & II, the common areas are required by law to be owned in common shares by the unit owners.

Good Luck!

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